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GOOGLE INC.

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 ORACLE AMERICA, INC.,

16 Plaintiffs,

17 v.

18 GOOGLE INC.,

19 Defendant.  
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Case No. CV 10-03561 WHA

**GOOGLE'S RESPONSE TO REQUEST  
FOR INFORMATION ON WILLFULNESS  
EVIDENCE (ECF NO. 1297)**

Date: September 17, 2015  
Time: 8:00 a.m.  
Dept. Courtroom 8, 19<sup>th</sup> Floor  
Judge: Hon. William Alsup

Pursuant to the Court's August 19, 2015 Order requesting summaries of evidence that "either party intends to present to the jury on the issue of willfulness that would not be relevant to any other issues to be tried to the jury," ECF No. 1297, Google hereby responds as follows:

Although Google does not yet know the full scope of evidence that Oracle seeks to present on the issue of willfulness, Google is not presently aware of any additional evidence that it would present to the jury to rebut a willfulness claim that would not also be relevant to Google's fair use defense.

Google wishes to note, however, that the presence or absence of overlapping evidence between fair use and willfulness is not ultimately dispositive of Google's pending motion to preclude the submission of the issue of willfulness to the jury. ECF No. 1284 ("Motion"). In bringing its Motion, Google is not asking the Court to exclude any specific evidence, or categories of evidence, that would otherwise be admissible. Rather, as the title indicates, Google's Motion seeks to preclude Oracle from submitting a willfulness question to the jury—and from otherwise arguing that willfulness is an issue that the jury must resolve—unless and until Oracle elects to receive statutory damages under 17 U.S.C. § 504(c) in lieu of an award of actual damages and any additional disgorged profits under 17 U.S.C. § 504(b). This is because, as discussed more fully in Google's motion filed on August 6 (ECF No. 1284), willfulness is not relevant to any of the remaining issues in this case *except* as a potential enhancement to a statutory damages award. And given that Oracle previously demanded close to \$1 billion dollars in actual damages and disgorged profits during the last trial, Oracle realistically will not abandon that billion-dollar claim for relief in order to elect to receive a maximum of \$150,000 in statutory damages for each of the two copyrighted works at issue.

Dated: September 1, 2015

KEKER & VAN NEST LLP

By: /s/ Robert A. Van Nest

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